

Appl. No. 10/725,248
Docket No. P145
Amdt. dated September 24, 2008
Reply to Office Action mailed on June 2, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 53 are pending in the present application. No additional claims fee is believed to be due. Claims 1, 7, 14 and 19 have been amended. Claims 3 – 6 and 16 – 18 have been canceled. Claims 13 and 24 – 53 have been previously withdrawn.

Rejection Under 35 U.S.C. § 102 Over Suzuki

Claims 1 – 5 and 14 – 17 have been rejected under 35 U.S.C. § 102 as being anticipated by Suzuki, et al. (US Publication No. 2002/0054923) (“Suzuki”). Applicants respectfully traverse this rejection.

Suzuki is directed to:

An agent for preventing, improving or treating hypertension, which exhibits a hypotensive effect, inhibits the rise of blood pressure and improves hypertension, and food for preventing or improving hypertension, which does not become a burden in daily intake, has a higher antihypertensive effect and is useful as a diet during treatment for patients of hypertension.

Abstract. Suzuki, however, fails to teach each and every element of the claims. Claim 1 is directed to, *inter alia*, a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, wherein the composition is a gravy which is adapted for use by a companion animal. Claim 14 is directed to, *inter alia*, a composition comprising a fermentable fiber selected from the group consisting of beet pulp, short chain oligofructose comprising 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and mixtures thereof, wherein the composition is a gravy which is adapted for use by a companion animal. As best understood by Applicants, Suzuki fails to teach a composition that is a gravy. As Suzuki fails to teach each and every element of the claims, Suzuki cannot be said to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

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Rejection Under 35 U.S.C. § 102 Over Cheuk

Claims 1, 2, 4 – 12, 14, 15, and 18 – 23 have been rejected under 35 U.S.C. § 102 as being anticipated by Cheuk, et al. (US Publication No. 2003/0099759) (“Cheuk”). Applicants respectfully traverse this rejection.

Cheuk is directed to:

[a] canine pet food composition comprising a meat based material having an essentially solid mass assuming the shape of the container in which it is packed, said pet food having meat particles with a moisturized appearance and visually recognizable discrete food particles upon slicing the pet food mass after departure from the solid container.

Abstract. Cheuk, however, fails to teach each and every element of the claims.

Claim 1 is directed to, *inter alia*, a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, wherein the composition is a gravy which is adapted for use by a companion animal. Claim 14 is directed to, *inter alia*, a composition comprising a fermentable fiber selected from the group consisting of beet pulp, short chain oligofructose comprising 1-kestose, nystose, and 1F-beta-fructofuranosylnystose, and mixtures thereof, wherein the composition is a gravy which is adapted for use by a companion animal. Cheuk discloses a “meat based material having an essentially solid mass assuming the shape of the container in which it is packed...” The composition has “...visually recognizable discrete meat particles with a moisturized appearance upon slicing the pet food mass after the departure from the said container.” Para [0003]. As best understood by Applicants, Cheuk, however, fails to teach the gravy compositions as claimed. Cheuk specifically states “[t]he final mixture is filled into cans, which are then sealed and sterilized. In this case, the product produced a solid mass with recognizable discrete meat particles with a moisturized appearance.” Para [0049]. As best understood by Applicants, Cheuk, therefore, teaches a solid mass and not a gravy composition. As Cheuk fails to teach each and every element of the claims, Cheuk cannot be said to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

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Rejection Under 35 U.S.C. § 103(a) Over Farag in view of Food, 2705 and 66

The Examiner's Answer has included the following New Ground of Rejection. Claims 1, 2, 6 – 9, 14, 15, and 18 – 21 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Farag in view of <http://en.wikipedia.org/wiki/Food> ("Food"), http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705 ("2705") and <http://dictionary.reference.com/search?q=companion&r=66> ("66"). Applicants respectfully traverse this rejection.

Farag is directed to "[a] bland food supplement which can be used as a filler, extender, or protein binder in a variety of food products is made from water-extracted vegetable pulp such as sugar beet pulp." *Abstract*. Food is directed to a definition of food as provided on Wikipedia.org and states "[f]ood is any substance that can be consumed, including liquid drinks. Food is the main source of energy and of nutrition for animals, and is usually of animal or plant origin." 2705 is directed to "Beet Pulp: Its Benefit in Pet Food." 66 is directed to a definition of companion as provided on dictionary.reference.com and states "companion a. A person who accompanies or associates with another; a comrade. b. A domestic partner. 2. A person employed to assist, live with, or travel with another. 3. One of a pair or set of things; a mate." The combination of Farag with Food, 2705 and 66, however, fails to render the claims of the current application obvious.

Farag, Food, 2705 and 66, either alone or in combination, fail to teach a gravy composition adapted for use by a companion animal. The claims of the current application are directed to, *inter alia*, a composition that is a gravy. The composition of Farag is dry and quickly swells in hot or cold aqueous systems, thereby creating a filling and thickening material. Col. 1, lines 54 – 62. The Office states that "it would have been obvious...to modify the form of the composition taught by Farag...because...the composition taught by Farag could be used in gravies, soups, sauces, dips and batters as well as imitation fruit drinks." Farag merely teaches that such a composition is used as a "filling material" useable in such food products. Col. 3, lines 42 – 49. Farag, however, does not teach that the composition may be provided as a gravy composition itself nor does Farag provide any reasonable expectation of success in modifying the composition from a dry form to a gravy. Farag, Food, 2705 and 66, either alone or in combination,

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fail to provide for a gravy composition adapted for use by a companion animal. As noted, Farag fails to provide a gravy composition. Farag, Food, 2705 and 66, either alone or in combination, fail to provide a reasonable expectation of success in modifying the composition of Farag in order to arrive at the claimed composition. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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